
CANADA	)	In the matter of an Application for a Production
	)	Order pursuant to section 487.012 of the <i>Criminal</i>
PROVINCE OF ONTARIO	)	<i>Code</i> , and Sealing Order pursuant to Section 487.3 of
	)	the said Code.
EAST REGION	)	

INFORMATION TO OBTAIN A PRODUCTION ORDER AND SEALING ORDER

This is the Information of **Corporal Greg Horton** a Peace Officer of the Royal Canadian Mounted Police, in the city of Ottawa, Ontario.

I have reasonable grounds to believe and do believe that offences contrary to an Act of Parliament have been committed, to wit:

- **Michael Duffy between December 22, 2008 and June 1, 2013 at Ottawa, Ontario, being an official in the Senate of Canada, did commit breach of trust in connection with the duties of his office by filing inappropriate expense claims contrary to section 122 of the *Criminal Code*.**
- **Michael Duffy being an official in the Senate of Canada, between January 1, 2013 and April 30, 2013 at Ottawa, Ontario did for his benefit and without the consent in writing of the head of the branch of that government of which he is an official, accept an advantage or benefit of money (\$90,124.27) from Nigel Wright a person having dealings with the Government of Canada contrary to section 121(1)(c) of the *Criminal Code*.**

AND THAT there are reasonable grounds for believing that the following documents and/or data will afford evidence of the said offences:

- **All declarations of primary and secondary residence submitted by Senator Mike Duffy between December 22, 2008 and June 1, 2013.**
- **All Travel Expense Claim forms (for 64 points travel system and living expenses in the NCR) and supporting documentation and receipts submitted by Senator Mike Duffy between December 22, 2008 and June 1, 2013.**
- **Report of the Clerk of the Senate dated May 28, 2013, pertaining to Senator Mike Duffy's expenses.**
- **All billing statements of all American Express corporate travel cards issued to Senator Mike Duffy by the Senate of Canada, dated between December 22, 2008 and June 1, 2013.**
- **All detailed billing statements pertaining to all mobile telephones issued by the Senate of Canada to Senator Mike Duffy, dated between December 22, 2008 and June 1, 2013.**

- Senate attendance records of Senator Mike Duffy for all days that the Senate was in session, between December 22, 2008 and June 1, 2013.
- Copies of the four documents submitted to the Senate by Senator Mike Duffy, as supporting indicators of where his primary residence is located, consisting of: a driver's licence, provincial health card, information from personal income tax return providing provincial tax information, and a signed statement of where he voted.
- A copy of the electronic calendar maintained by Senate Finance documenting Senator Mike Duffy's travel and expenses, and corresponding legend of codes used on the calendar.
- A system generated report to show records of all expense claim payment from the Senate to Senator Mike Duffy between December 22, 2008 and June 1, 2013.
- A system generated report to show records of all expense repayments by Senator Duffy to the Senate between December 22, 2008 and June 1, 2013.
- A copy of a check issued to the Receiver General of Canada, from Senator Mike Duffy, for a value of \$90,172.24.
- Copies of all drafts of the Twenty-Second Report of the Senate of Canada 's Standing Committee on Internal Economy, Budgets and Administration

AND THAT there are reasonable grounds for believing that the said documents and/or data or some part of them are in the possession or control of:

- Nicole Proulx and Michel Patrice of the Senate of Canada in Ottawa, Ontario

INTRODUCTION

I, Greg Horton, a member of the Royal Canadian Mounted Police (RCMP) in the Province of Ontario, make oath and say as follows:

1. I am a peace officer in the RCMP for the past 21 years with experience in major crime investigations and applications for judicial authorizations. I have personal knowledge of the matters hereinafter set out, and I believe all of the information in this Information to be true.
2. I am currently assigned to Sensitive and International Investigations within the National Division of the RCMP, responsible for investigating matters of significant risk to Canada's political, economic and social integrity. My role in this investigation is that of the lead investigator, and as part of that role, to seek when appropriate, judicial authorizations. Throughout this Information, where I state my belief, that belief is based on my experience as set out above and on the other information in this Information.

OVERVIEW

3. This application is in relation to an RCMP investigation into the activities of Senator Mike Duffy, whom I believe has committed offences of Breach of Trust and Frauds on the Government. These offences are in relation to travel and housing expense claims, submitted in relation to his duties as a Canadian Senator, and in relation to accepting a \$90,000 gift to pay back those expenses.
4. This investigation commenced in March 2013, after several media stories were published in relation to the Senate referring travel and housing expense claims of Senators Mike Duffy, Patrick Brazeau, and Mac Harb to Deloitte, a management and accounting firm, for the purpose of an external audit. At issue were claims for travel and housing allowances in relation to where the Senators actually live. A Senator is eligible for certain housing and travel expenses while working in Ottawa, if their primary residence is located more than 100 km from the National Capital Region (NCR). Because of the extensive media coverage, and the mandate of National Division, I commenced this investigation in preparation of the release of the Deloitte reports. In May 2013, the Senate received and publically released three Deloitte reports, one pertaining to each Senator being audited. My team then commenced a review of the three reports, as well as laws, rules, policy and guidelines which govern the Senators. We also monitored developments in the media. While the investigation is focusing on all 3 Senators, this application is specifically related to Senator Duffy.
5. During the period that Deloitte was conducting its audit, Duffy publically announced that he had repaid more than \$90,000¹ in living expenses, citing unclear Senate rules for having made the claims. The Senate acknowledged his repayment to the Receiver General of Canada. After examining an 18 month period of expense claims, Deloitte produced a report finding that Duffy referred to his cottage on Prince Edward Island (PEI) as his primary residence, and filed expense claims relating to the house he owns in Ottawa, claiming it as his NCR secondary residence. He therefore collected a housing allowance for that secondary residence. The Deloitte report found that there was a lack of clarity in the Senate regulations and guidelines when referring to primary and secondary residences. It did not conclude any fault on Duffy's part, but did provide a breakdown on where Duffy spent his time, the majority being in Ottawa. The report also identified a period of time when Duffy claimed 12 days of per diem for being in Ottawa on Senate business, when in fact he was in Florida. Duffy has since repaid that money.
6. As a result of the Deloitte report, the Senate Standing Committee on Internal Economy, Budgets and Administration produced its own report, *Twenty-Second Report* (Senate Report 22) which summarizes the Deloitte report, and the final findings of the Senate committee looking into the matter. The Senate report acknowledged that Duffy paid back more than \$90,000 in expenses, and that Deloitte was unable not assess the status of

¹ The actual amount is \$90,172.24. For ease of reference, I will refer to this as \$90,000 throughout this Information.

Duffy's primary residence based on the Senate regulations and guidelines. It recommended that Duffy's expense claims be monitored for a period of not less than one year. Senate Report 22 was not critical of Duffy, and did not find any fault on his part.

7. Media reports then emerged that Duffy had not paid back the \$90,000 himself, and that it was in fact paid back by the Prime Minister's then Chief of Staff, Nigel Wright. The reports claimed that there was an agreement, possibly a written agreement, between Duffy and Wright, stipulating that Duffy would publically acknowledge making the claims in error and taking the personal decision of paying back \$90,000. In exchange for this public acknowledgement, Nigel Wright would actually cover the cost of the \$90,000, and the government would "go easy" on Duffy in its report. This public revelation resulted in the resignation of Wright from the Prime Minister's Office (PMO), and further revelation that there was in fact an initial or draft Senate Report 22 which was more critical of Duffy. The final Senate report however was less critical on Duffy, which lends credence to the media reports, that there was a deal in place.
8. Additional media reports emerged which focused on some of Duffy's travel claims during the 2011 Federal election campaign. Journalists identified instances when Duffy campaigned for Conservative candidates in various parts of the country. Some of the travel costs associated with these trips was paid for by the candidates or the Conservative Party, while others were paid for by the Senate. Additionally, Duffy submitted NCR per diem claims for some of these dates, claiming he was in Ottawa when he was not. These allegations caused more media furor, a further Senate review of Duffy's expense claims, and a subsequent report, Senate Report 26, which referred the matter to the RCMP.
9. I believe that Senator Duffy has demonstrated a pattern of filing fraudulent expense claims. He maintains that his primary residence is in PEI so that he can collect housing and travel allowances from the Senate, however uses his Ottawa residence as his primary residence when convenient, such as when dealing with OHIP so that he can obtain medical coverage in Ontario. He has submitted expense claims for Senate business to cover travel costs during the Federal election campaign, and filed per diem claims for being in Ottawa for Senate business on days when he was actually campaigning in other parts of the country. He has also submitted expense claims for being in Ottawa on Senate business, on days when he was actually in Florida or elsewhere. Once this matter became the focus of an independent audit, Duffy publically announced that he paid back \$90,000, before the results of the audit were even known. Only later was it revealed that Nigel Wright gave \$90,000 to Duffy to cover the cost of the repayment.
10. The purpose of this application is to obtain documents and data from the Senate of Canada, which will provide evidence relating to Senator Duffy's travel and housing expense claims. The period of time for which I am seeking documents and data is for the entire time that Duffy has been in the Senate. I believe that a forensic audit of these expenses will provide evidence of the named offences. I am also seeking documents in the possession of the Senate relating to Duffy's repayment of \$90,000.

GROUNDS FOR BELIEF

Senate Expenses Controversy Timeline

In this section I will provide a brief chronology of events. Much of this has played out in the media, which has elicited various responses from those involved, through the media. Once a general timeline is described, I will then address some of these events or topics in greater detail under additional individual headings.

11. Mike Duffy moved to Ottawa in 1971, where he lived and worked as a journalist for 38 years.² I conducted CPIC / Ontario Paris drivers license queries relating to Duffy, and found that he has an Ontario license history dating back to November 16, 1971 which expired in May 2009. His license history also provides a history of his addresses dating back to 1984, all of which are in Ottawa. His most recent address is listed as 47 Morenz Terrace, Ottawa, where he has lived since July 2003.
12. On December 22, 2008 Duffy was appointed to the Canadian Senate by Prime Minister Harper, representing PEI³. According to the Constitution, one of the eligibility requirements for membership in the Senate is that Senators must own property in the province that they represent, and must live in the province they represent.
13. On January 2, 2009, Mike Duffy was issued a PEI drivers license with an address of 10 Friendly Lane, Kinkora, PEI.⁴ The license records that I have viewed contain a notation that he became a PEI resident on December 22, 2008, the same date that he was announced as appointed to the Senate. He has served in the Senate as a representative from PEI since that time.
14. Since 1989, the Senate has a policy that Senators who come to Ottawa to carry out their parliamentary functions, and who are more than 100 kilometers from their registered primary residence, are considered to be on travel status while in Ottawa, and may be reimbursed for eligible living expenses in the National Capital Region.⁵
15. On December 6, 2012 The Standing Senate Committee on Internal Economy, Budgets and Administration (Standing Committee) instructed the Senate Administration to conduct an audit to assess whether all senators' declarations of primary and secondary residence are supported by sufficient documentation.⁶

² Senate webpage Biography of Mike Duffy as it appeared on March 13, 2013.

³ I learned this by reading a CBC news article dated December 22, 2008

⁴ I learned this by reading a police indices query conducted by RCMP in PEI, at my request on March 15, 2013.

⁵ Statement of Senator Tkachuk on the 19th report of internal economy dated February 28, 2013

⁶ I learned this by reading a Senate news release dated December 6, 2012.

16. To determine primary residency, all Senators were asked to submit copies of:

- a. a driver's license;
- b. a provincial health card;
- c. relevant information on their income tax return;
- d. a signed statement of where they vote

17. According to a CTV News story dated February 4, 2013 Senators had until January 31, 2013 to submit the primary residence supporting documentation. Prior to that deadline, a representative from Duffy's office contacted the office of the PEI Health Minister, Doug Currie, in an effort to expedite Duffy's application for a PEI health card, rather than having to wait the mandatory three months. An RCMP Investigator has since interviewed Mr. Currie as well as his Administrative Assistant, Sandra Acorn, and Manager of Medicare at Health PEI, Charlie Allen. Ms. Acorn confirmed that Duffy did call the office asking to speak with the Minister, who was not available. He proceeded to ask Ms. Acorn about the application process. Ms. Acorn was later contacted two more times that same day by Mary McQuaid from Duffy's office, asking to have Duffy's provincial health card application expedited, assuring her that if it was it would be kept confidential. The application was not expedited. The exact date this occurred has not been determined, but appears to have been some time in December 2012.⁷ I do not know if a PEI health card was ever issued to Senator Duffy after that.

[The website for Health PEI, which I have viewed, states that the PEI Hospital and Medical Services Plan is designed to provide coverage for eligible PEI residents. A resident of PEI is defined as anyone who is legally entitled to remain in Canada and who makes his or her home and is ordinarily present, on an annual basis, for at least six months plus a day in Prince Edward Island. Persons who establish permanent residence in PEI from elsewhere in Canada will become eligible for insured hospital and medical services on the first day of the third month immediately following the month they became a permanent resident of PEI.]

18. On February 8, 2013 the Senate announced that the residency declarations and related expenses of Senators Brazeau, Harb, and Duffy were referred to external auditors at Deloitte for review and report.⁸ This caused significant media attention over the next several weeks, resulting in the RCMP commencing an investigation in March, to gather information available in the public domain through open sources, as well as through police indices, in preparation for the results of the Deloitte audit.

19. On April 19, 2013 The CBC reported that Duffy issued a public statement that he repaid more than \$90,000 in living expenses, prior to the completion of the Deloitte audit, and that he had repaid the money in March. The Senate issued a statement that day as well,

⁷ I learned this by reading the police report of Cpl. Troy MacLean dated May 27, 2013 at 0930hours and 1001 hours.

⁸ I learned this by reading a Senate news release dated February 8, 2013.

which I have read, stating “*Senator Duffy has reimbursed the Receiver General \$90,172.24 for living allowance expenses*”.

20. On May 9, 2013 the Senate publically released the Deloitte reports pertaining to Senators Brazeau, Duffy, and Harb, which I have read. There were three reports in total, one for each Senator. The remainder of this Information will relate only to Senator Duffy, and the related police investigation. For the remainder of this Information, when I refer to a Deloitte Report, I am referring only to that which is in relation to Senator Duffy. Among its findings, the Deloitte report stated that existing regulations and guidelines did not contain criteria for determining “primary residence”, and as such they were not able to assess the status of Senator Duffy’s primary residence. The report also identified a 12 day period when Duffy was in Florida, but submitted per diem expense claims for having been in Ottawa on Senate business. I will speak further on this under the heading **The Deloitte Report**. I have attached a copy of the report as Exhibit I.
21. The Senate Standing Committee also released its own report (Senate Report 22) dated May 9, 2013 which summarizes the Deloitte report, and the final findings of the Senate committee looking into the matter of expenses and housing claims. The Senate report acknowledged that Duffy paid back more than \$90,000 in expenses, and noted that Deloitte could not assess the status of Duffy’s primary residence based on the Senate regulations and guidelines.⁹ A week later, media stories emerged stating that a draft Senate report had originally been critical of Duffy, and that the final version omitted information critical of Duffy, prior to being made public. It was further alleged that this was done in keeping with a secret agreement between Duffy and Nigel Wright.¹⁰ This will be discussed further under the heading **The Senate Reports**.
22. Also on May 9th, 2013 Duffy issued a statement on his personal website¹¹, which I have read, which said the following, in part:
- a. *The Deloitte audit of expenses claimed by me and other senators has been a fair, impartial effort by a credible third party to deliver that level of transparency and clarity. This audit has indicated that there is a ‘lack of clarity’ in the Senate’s rules and definitions with regard to residency and housing allowances.*
 - b. *But while the rules themselves may have been unclear, my duty as a Senator and as a custodian of Canadian tax dollars is absolutely clear. I believe it is incumbent upon me as a parliamentarian to put questions about my expenses to rest.*
 - c. *The Deloitte audit revealed a single claim, totaling \$1050.60, which I erroneously claimed due to an administrative oversight. I should have noticed the error at the time, but did not. That claim was repaid in March, prior to the completion of the*

⁹ I learned this by reading the Senate report dated May 9, 2013.

¹⁰ I learned this by reading a CTV news story dated May 17, 2013.

¹¹ www.mikeduffy.ca

Deloitte audit, as part of a total reimbursement of just over \$90,000. This covered all of the expenses I was paid as a result of having to maintain two residences; one on Prince Edward Island, another in Ottawa.

- d. *I will not be seeking the return of any portion of this reimbursement even though these expenses were claimed in good faith. When I discussed these issues with my wife in February, we came to the conclusion that repaying the \$90 thousand was the right thing to do, regardless of the outcome of the audit that was to come. It was the right decision then, and it is the right decision now.*

23. In the week that followed the release of the Deloitte and Senate reports, several media stories began to emerge claiming that Nigel Wright, Chief of Staff to Prime Minister Harper, actually paid the \$90,000 debt for Duffy, by writing a personal check to Duffy. In a CTV News report dated May 15, 2013 The Prime Minister's director of communications confirms this, and is quoted from an e-mail:

"Mr. Wright therefore wrote a cheque from his personal account for the full amount owing so that Mr. Duffy could repay the outstanding amount".

The article also quotes an e-mail from Duffy stating:

"The Royal Bank helped me...I dealt with my bank personally. Nigel played no role"

Additional media stories also stated that confidential sources told the journalist that there was a deal or agreement between Duffy and Wright whereby Duffy would publically announce that he had claimed the expenses in error and was paying the money back, and in return Wright would actually cover the financial burden, and the Senate investigation into his expenses would "go easy" on him¹². The May 15, 2013 article also quoted a February 20, 2013 e-mail obtained by the media which quotes Duffy as saying that Wright had worked out a "scenario" in which all of his claimed living expenses would be covered, including "cash for the repayment".

24. Media stories also claimed that the agreement between Duffy and Wright was brokered with the assistance of Benjamin Perrin, who was a legal adviser to the Prime Minister at the time.¹³ Perrin, who no longer works for the PMO, has publically denied any involvement.¹⁴ Wright has since resigned as Chief of Staff to Prime Minister Harper, and issued a statement acknowledging that he paid the \$90,000 because it was in the public interest, and denying that the Prime Minister had any knowledge of it.¹⁵ This will be discussed further under the heading of **Nigel Wright and \$90,000.**

¹² CTV News article dated May 20, 2013 at 2206 hours.

¹³ CTV News article dated May 20, 2013 at 2206 hours.

¹⁴ CTV News article dated May 22, 2013 at 1151 hours.

¹⁵ CBC News article dated May 19, 2013 at 0903 hours.

25. On May 16, 2013 it was reported that journalists reviewing expenses from the 2011 Federal election identified several instances where Duffy campaigned for conservative party candidates, and was reimbursed for his travel expenses by those candidates. However, it was revealed that on some days when Duffy was campaigning in various parts of the country, he filed claims for per diems, claiming he was in Ottawa on Senate business when he was not.¹⁶ This will be discussed further under the heading **Senator Duffy Expense Claims**.
26. On May 29, 2013 the Senate Standing Committee held a meeting which was open to the public, and broadcast on the Internet. I watched that meeting, during which additional expense details were revealed. A motion was tabled and unanimously passed that the Senate refer the entire Duffy matter to the RCMP. A letter in that regard was subsequently received by the RCMP from the Senate dated May 30, 2013. With the letter was an amended Senate Report 22, the new report being identified as Senate Report 26. The new report was critical of Duffy. I have read these documents, and will discuss both of **The Senate Reports** later in this document.
27. On June 10, 2013 the RCMP received the a CD from the Senate containing the following:
- a. Duffy's annual declarations of primary and secondary residence since 2011
 - b. All Expense claims for living in NCR submitted by Duffy between April 1, 2011 and September 30, 2012;¹⁷
 - c. A copy a Report of the Clerk of Senate summarizing the Senate's findings of the review of Duffy's expenses, dated May 28, 2013
 - d. Senate Standing Committee meeting minutes dated May 28, 2013.

These documents will also be discussed further under **Senator Duffy Expense Claims**.

The Deloitte Report

28. As mentioned previously, Deloitte was retained by the Senate to examine expenses of Senator Duffy. Deloitte produced a report in May 2013, which I have read, and the following is a summary of the report and their findings: (The complete report is attached as Exhibit I)
- a. Deloitte was retained by the Senate in order to undertake an examination of Senator Duffy's living allowance expense claims, including an assessment of his primary and secondary residency status;

¹⁶ Globe and Mail news article dated May 16, 2013 at 0501 hours / CTV news article dated May 16, 2013 at 0840 hours.

¹⁷ The letter that accompanied the CD stated that it contained all expense reports pertaining to Duffy living in the NCR, since his appointment to the Senate. Upon review, it was noted to only contain those submitted since April 1, 2011. The Senate has since confirmed this was an administrative error, and the rest would be forthcoming.

- b. Deloitte was not engaged to, and did not perform a financial statement audit, review or compilation for the purpose of expressing an opinion on historical financial statements. They did perform a forensic examination which utilizes accounting and investigative techniques to provide an analysis related to issues identified to them;
- c. Findings were based on rules and guidelines of the Senate, which include *Senate Administrative Rules*, *Senators' Travel Guidelines*, and *Senator's Living expenses in the NCR Guidelines*;
- d. Some of the documentation that they reviewed included declarations of Duffy pertaining to his residences, property tax records, living and travel claims and supporting documentation, cellular phone records, corporate credit card statements, and Senate attendance records;
- e. The period of time under examination was an 18 month period, between April 1, 2011 and September 30, 2012;
- f. Deloitte requested an interview with Duffy, as well as certain financial documents from him to assist in their examination, however he did not cooperate¹⁸;
- g. By relying on the cell phone records of Duffy's Senate issued cell phone, Deloitte auditors had to assume that Duffy was the sole user of the phone, and that it was not in someone else's possession.
- h. Senators, whose "primary residence" is located more than 100 kilometres from the NCR, are entitled to a reimbursement of travel expenses, and a reimbursement of living expenses, while in the NCR for Senate business;
- i. The regulations and guidelines applicable during the period of examination do not include criteria for determining "primary residence". As such, Deloitte was not able to assess the status of Duffy's PEI residence as his primary residence;
- j. When assessing Duffy's location, Deloitte used the measurement of where Duffy slept or spent the night, rather than where he was throughout the day.
- k. Based on the analysis of documents by Deloitte, they were able to confirm Duffy's location for 94% of the time of the audit (515 days) and identified his likely location for another 3% (18 days). Only 3% of the days (16 days) was Duffy's location unconfirmed.

¹⁸ The Deloitte Report notes that towards the end of the Audit process, Deloitte received an e-mail from Duffy's lawyer dated April 20, 2013, which contained a letter to Senator Tkachuck from Duffy, offering to meet with the Senate or Deloitte. The offer was declined by the Senate as it would delay the audit process which was nearing completion.

- l. It appears that Duffy spent approximately 54% of his time in Ottawa, for Senate business or otherwise, and 30% of his time in PEI, at his primary residence or elsewhere. The majority of the time spent in PEI was during extended holiday months during the summer;
- m. The claimed travel by Duffy between Ottawa and PEI did take place;
- n. A 17 day period was identified during which Duffy was in Florida, but claimed 12 days of per diem, for a total of \$1050,60, for Senate business in Ottawa;
- o. Duffy submitted yearly declarations that his primary residence is located in PEI, during the 18 month period under examination;
- p. Senator Duffy's travel expense claims related to living allowances in the NCR consist of claims for private accommodation in the NCR (for having the Ottawa property he owns available for Senate business), plus per diem amounts related to meals and incidentals. His claims during the 18 month period totaled \$34,128. This total does not include the cost of travel for Duffy between his residence in PEI, and Ottawa;
- q. With regard to the 4 criteria that Senators were required to submit (driver's license, provincial health card, relevant information on their income tax return, and a signed statement of where they vote) Duffy met only one, the PEI Driver's license;
- r. During the 18 month period (549 days), Duffy spent approximately 164 days in PEI. 121 of those days were during the summer months when the Senate was not sitting.

(note: The Deloitte Report states that Duffy spent approximately 30% of his days in PEI, however less than 8% of that time is outside of summer vacation months);

- s. The majority of Senator Duffy's travel claims are for travel from Ottawa to Prince Edward Island and returning to Ottawa. In other words, the travel claims are for trips to go to the declared primary residence, as opposed to claims for travel from the declared primary residence to Ottawa in order to attend Senate business. Due to the distance, travel is by air, which is supported by boarding passes and other supporting documents for travel expenditures. Duffy has travelled by car from Ottawa to PEI in June of both 2011 and 2012, in both years returning by car approximately three months later in September.

Senator Duffy Expense Claims

29. As previously set out, the RCMP received the a CD from the Senate on June 10, 2013 containing the following:
- a. Duffy's annual declarations of primary and secondary residence for fiscal years 2011 and 2012;
 - b. A copy of a Report of the Clerk of the Senate summarizing the Senate's findings of a review of Duffy's expenses, dated May 28, 2013
 - c. All Expense claims for living in NCR submitted by Duffy between April 1, 2011 and September 30, 2012.
30. I reviewed the housing declarations of Senator Duffy. Both claim that his primary residence in PEI is 10 Friendly Lane, Cavendish, PEI, and he claims expenses for his residence in Ottawa (47 Morenz Terrace) as a secondary residence.
31. The Report of the Clerk of the Senate dated May 28, 2013 is a summary of the Senate's findings after a review of Duffy's NCR per diem expense claims. This report was prepared by Nicole Proulx, Director of Finance and Procurement for the Senate, and was conducted after the Deloitte Report was finalized, and media reports of improper expense claims made by Duffy during the 2011 Federal election. Besides reading her report, I also interviewed Ms. Proulx. Her review was conducted by comparing travel expense claims, monthly living in the NCR per diem claims, and the Deloitte Report and supporting documentation. The time period that she reviewed was the same 18 month period that was reviewed by Deloitte. Based on her review, she determined that Senator Duffy claimed 49 days of NCR per diem that he was not entitled to, and was paid for 25 of those days because Senate finance did not know that he was not in Ottawa on the dates of those claims. The other 24 claimed days were denied by Senate finance. Her findings are summarized in the table below:

April	2011	Inappropriate claim of: 6 days	Paid 6 days
May	2011	Inappropriate claim of : 2 days	Paid 2 days
June	2011	Inappropriate claim of : 1 day	Denied
August	2011	Inappropriate claim of : 18 days	Denied
September	2011	Inappropriate claim of : 6 days	Paid 3 days, denied 3 days
October	2011	Inappropriate claim of : 2 days	Paid 1 day, denied 1 day
January	2012	Inappropriate claim of : 13 days	Paid 12 days, denied 1 day
March	2012	Inappropriate claim of : 1 days	Paid 1 day
TOTAL		49 days	25 days paid, 24 denied

32. Also on the CD received from the Senate, were copies of all travel expense claims filed by Senator Duffy during the 18 month period covered in the Deloitte report. Investigators on my team examined the expense claims in an effort to verify Ms. Proulx's findings, and identify any other irregularities. Cpl. Jolette produced a report outlining the findings of

that review, which I have read. I also examined the expense claims identified by Cpl. Jolette, and other supporting documents such as Elections Canada filings of Conservative party candidates which took place during that same time period. Cpl. Jolette's review was of 91 expense claims and supporting receipts and documentation. He compared these claims with information obtained from Elections Canada, as well as information contained in the Deloitte Report. The purpose of the review was to substantiate that Senator Duffy submitted claims for expenses that he was not entitled to. In producing their report, Deloitte had access to mobile telephone records and American Express statements to assist them in identifying Duffy's location on a given day. Investigators on my team did not have access to the telephone and credit card statements, so at times had to rely on the Deloitte Report for Duffy's location. That is one of the reasons for this application, to obtain the mobile phone records and credit card statements of Senator Duffy, from the Senate, so that the RCMP can conduct its own forensic audit. The review conducted by my team to date has determined that:

- a. On April 5, 2011, during the Federal Election campaign, Duffy flew from Ottawa to Toronto to meet with the Prime Minister, and then flew on to Yellowknife to campaign with Conservative candidates. He returned to Ottawa on April 10, 2011. On Duffy's monthly per diem expense claim submitted for April 2011, he claimed and was paid per diems for April 6, 7 and 8, at \$86.35 per day. He was not in Ottawa for those three days and was therefore not entitled to those claims.¹⁹
- b. On April 12, 2011, during the Federal Election campaign, Duffy flew from Ottawa to Charlottetown, and returned on April 21, 2011, flying from Moncton to Ottawa. On his Senate travel claim which was submitted to pay for the flights and a taxi, Duffy listed his itinerary as "Ottawa-Charlottetown-Moncton-Ottawa" and listed the purpose of the trip as "meetings in the region and in New Brunswick". Total cost for the flights and partial per diems was \$2374.22. I reviewed documents obtained from Elections Canada, filed by Conservative party candidates in New Brunswick and Nova Scotia, which contain expense invoices and receipts given to the candidates by Duffy, seeking repayment of travel funds relating to hotels, gas, and car rental. The dates of the campaigning are April 14, 16, 19, 20, and 21. Based on this, it would appear that the purpose of Duffy's trip was to campaign in the Federal Election, and that the cost of the flights to and from the region should not have been charged to the Senate. Based on my review of the expense claim, Duffy was late in filing it, and it was not initially paid because of that. It is unclear if it was eventually paid.²⁰
- c. On April 27, 2011, during the Federal Election campaign, Duffy flew from Ottawa to Toronto to campaign for Conservative party candidates. He returned to Ottawa on the evening of April 28, arriving after midnight. This travel was not

¹⁹ Elections Canada documents submitted by Conservative candidate, Sandy Lee, and Duffy NCR per diem claim for April 2011.

²⁰ Duffy Senate expense claim for April 12-21, 2011 travel, and Elections Canada filings of David Morse, Scott Armstrong, Gerald Keddy, Greg Kerr, Tilly O'Neil Gordon, Rodney Weston.

charged to the Senate. On Duffy's monthly per diem expense claim submitted for April 2011, he claimed and was paid per diems for April 28 and 29 at \$86.35 per day.²¹ He was not in Ottawa on the April 28, nor was the Senate sitting. He was therefore not entitled to those claims.

- d. On April 30, 2011, during the Federal Election campaign, Duffy and his wife flew from Ottawa to PEI for "meetings in the region". They returned to Ottawa on May 3, 2011, the day after the Federal election. Duffy submitted a claim to the Senate for \$3573.94 for travel, and 102.50 for partial per diems. On Duffy's monthly per diem expense claim submitted for May 2011, he claimed and was paid full per diems for May 2 and 3 at \$86.35 per day. He was not in Ottawa on May 2 and therefore not entitled to that claim. Regarding May 3, he claimed full per diem on his monthly claim, but also \$71.30 partial per diem on his travel claim.²²
- e. On June 7, 2011, Duffy flew back to Ottawa from PEI. He claimed partial per diem of \$71.30 on his travel claim. On his monthly per diem expense claim submitted for June 2011, Duffy claimed NCR per diem for June 6 and 7. The claim was later amended to remove those two dates from the claim, and they were not paid.²³
- f. During the month of August 2011, Duffy was in PEI for every day, other than the period of August 15 to 20. He submitted NCR per diem claims for 18 days, at \$86.35 per day, claiming he was in Ottawa. His claim was denied by Senate finance as they knew he was in Ottawa based on travel claims showing he was in PEI for that time period.²⁴
- g. On September 9, 2011, Duffy flew from Ottawa to PEI, and returned by car leaving PEI on September 14, 2011. On his monthly per diem expense claim submitted for September 2011, Duffy claimed full per diem of \$86.35 per day for September 12 and 13.²⁵ He was not in Ottawa on those days as he was in PEI. Those claims were denied by Senate finance based on travel claims showing he was not in Ottawa.
- h. On October 1, 2011, Duffy flew from Ottawa to PEI, returning October 4. On his monthly per diem expense claim submitted for October 2011, Duffy claimed full per diem of \$86.35 per day for October 3 and 4. The Senate finance denied his claim for one of those days, and paid the other.²⁶ Travel documents show that

²¹ Elections Canada documents submitted by conservative candidates John Carmichael, Gin Siow, Wladsylaw Lizon, and Joe Oliver, and Duffy NCR per diem claim for April 2011.

²² Duffy Senate expense claim for April 30 to May 3, 2011 travel, and Duffy NCR per diem claim for May 2011.

²³ Duffy Senate expense claim for Jun 4 – 7, 2011 travel, and Duffy NCR per diem claim for June 2011.

²⁴ The Report of the Clerk of the Senate dated May 28, 2013, Duffy NCR per diem claim for August 2011, Deloitte Report on Duffy.

²⁵ Duffy Senate expense claims for September 9-17, 2011 travel, and Duffy NCR per diem claim for September 2011.

²⁶ Duffy Senate expense claim for October 1-4, 2011, and Duffy NCR per diem claim for October 2011.

Duffy was in PEI on October 3 and not entitled to living in the NCR per diem for that day.

- i. Based on mobile phone records, Deloitte auditors concluded that Duffy was in Florida between January 12 and 28, 2012. Duffy claimed and was paid full per diem of \$87.55 per day for 12 of those days, claiming he was in the NCR. As stated previously, Duffy acknowledged the error after it was identified during the Deloitte audit, and repaid the \$1050.60.²⁷
 - j. On March 2, 2012, Duffy flew from Ottawa to Alberta, returning on March 4, 2013. He claimed partial per diem of \$72.20 on his travel claim for March 2. On his monthly per diem expense claim submitted for March 2013, Duffy claimed and was paid full per diem of \$87.55 for being in the NCR on March 2.²⁸
33. In The Report of the Clerk of the Senate dated May 28, 2013, Ms. Proulx concluded that the NCR per diem claims by Duffy while he was in Florida “*is not an isolated incident*”, and represents a “*pattern that raises concern*”. It should be noted that a Diane Scharf was Duffy’s Administrative Assistant between September 2011 and March 2012, and has publically stated that she would complete Duffy’s expense claims, and he would later sign them. She said it was possible that he is being blamed for her errors.²⁹ While Ms. Scharf may have made errors, Duffy did sign the expense claims where it says “*I hereby certify that these charges are in accordance with the Senate Administration Rules*”, and any errors on her part does not absolve him of responsibility. All of the above expense claims are part of the named offence of Breach of Trust. Efforts to interview Ms. Scharf to date have not been successful as she wants to speak with a lawyer first.

Nigel Wright and \$90,000

34. In March 2013, Duffy repaid \$90,000 to the Receiver General of Canada. This figure represents all of the living expenses paid to Duffy since being appointed to the Senate. These living expenses consist of Duffy’s secondary housing allowance for owning a house in the NCR, as well as NCR per diem claims relating to those days when he collected a per diem for being in Ottawa on Senate business. The details around the \$90,000 repayment are sorted:

- a. A February 22, 2013 news story quoted Duffy as saying he would repay his housing allowance, blaming unclear rules and admitting that he may have made mistakes when completing expense claims. He said he would return the money,

²⁷ The Deloitte Report dated May 9, 2013, Duffy NCR per diem claim for January 2012, and calendar of the senate for 2012.

²⁸ Duffy Senate expense claim for March 2-4, 2012 travel, and Duffy NCR per diem claim for March 2012.

²⁹ National Post media story dated May 30, 2013.

“even though I don’t believe I owe the money”. He said that after discussing the matter with his wife, he decided to pay back the money.³⁰

- b. The Deloitte Report quotes a letter to Duffy from Senator Tkachuk dated February 27, 2013 wherein Tkachuk provides Duffy with the \$90,172.24 figure representing Duffy’s total allowances including interest;³¹
- c. The Deloitte Report states that Deloitte received a letter from Duffy’s legal counsel dated March 26, 2013 advising that Duffy had repaid an amount regarding housing and living allowance;³²
- d. On Tuesday, April 16, 2013, the Deloitte auditors made a verbal presentation of their findings to Senators Tkachuk, Furey, and Stewart-Olson. At that time, the auditors advised that they noticed that Duffy had claimed NCR per diem while appearing to be in Florida during January 2012.³³ Deloitte later received a letter Dated April 18, 2013, from Duffy to Tkachuk which read in part: *“Following our informal conversation, Tuesday evening, I went through my files for January 2012...”*. Duffy says the claim was an administrative error by a staffer, and pledged to repay the money. While this partially relates to per diem claims, I am bringing it up in this context to demonstrate that Senator Tkachuk was in contact with Duffy during the audit process, which I believe is important, as Tkachuk is also in contact with Nigel Wright during the process. It was Nigel Wright who essentially paid back the \$90,000, and it was Tkachuk who headed the sub-committee which authored the Senate Report 22 on Duffy, which is amended from its draft version to be less critical of Duffy. This will be discussed further in the next section.
- e. On April 19, 2013, Duffy released a statement claiming that he paid back \$90,000 in living expenses in March.³⁴
- f. On April 19, 2013, the Senate Standing Committee released a brief statement which said that *“Senator Duffy has reimbursed the Receiver General \$90,172.24 for living allowance expenses”*³⁵
- g. In a statement issued on May 9, 2013 Duffy states that he repaid the \$90,000 in March, and that *“When I discussed these issues with my wife in February, we came to the conclusion that repaying the \$90 thousand was the right thing to do...”*³⁶

³⁰ CTV news article dated February 22, 2013.

³¹ Page 13 of Deloitte Report.

³² Page 5 of the Deloitte Report.

³³ I was advised of this by Gary Timm and Alan Stewart, the Deloitte auditors who conducted the examination.

³⁴ This statement was reported and quoted by several new agencies on April 19, however I cannot locate a copy of an actual Statement from Duffy.

³⁵ Standing Committee statement on website, dated April 19, 2013.

³⁶ Statement from Mike Duffy’s website dated May 9, 2013.

- h. On May 15, 2013, media reports emerged claiming that Prime Minister Harper's Chief of Staff, Nigel Wright, wrote a personal cheque to Mike Duffy to cover the cost of the \$90,000 repayment. Andrew MacDougall, director of communications for the Prime Minister, said that Duffy was unable to make a timely repayment, and confirmed that Wright wrote Duffy a personal cheque to cover the cost.³⁷
 - i. On May 19, 2013, Nigel Wright issued a statement which read, in part: *In light of the controversy surrounding my handling of matters involving Senator Duffy, the Prime Minister has accepted my resignation as Chief of Staff. My actions were intended solely to secure the repayment of funds, which I considered to be in the public interest, and I accept sole responsibility. I did not advise the Prime Minister of the means by which Sen. Duffy's expenses were repaid, either before or after the fact*".³⁸
35. On June 13, 2013, my office received a call from Patrick McCann, lawyer for Nigel Wright, advising that they would be sending some information to RCMP. The following day a letter was received advising that at the time that Wright paid the \$90,000 to Duffy, he was unaware of any fraudulent expense claims on Duffy's part. The letter also stated that Wright was willing to meet with investigators to provide whatever information may be required from him.³⁹
36. On June 19, 2013 Supt. Carrese and S/Sgt. Arbour, both from my unit, met with Patrick McCann and Peter Mantas (lawyers from Wright) to discuss the circumstances under which any future interview with Mr. Wright might take place. They were advised that RCMP were investigating the \$90,000 repayment by Duffy, and the payment of \$90,000 from Wright to Duffy, that both Wright and Duffy were subject of that investigation, and that a decision on whether to interview Wright as a suspect or witness had not been made. McCann and Mantas further advised that:⁴⁰
- a. Wright's role was to manage the Conservative Party, part of which was to deal with matters that could cause embarrassment;
 - b. Wright was of the view that Duffy should repay the money for the secondary housing, and had discussions with him in that regard;
 - c. Duffy was concerned that he did not have the money to cover the reimbursement;
 - d. Duffy was of the view that if he did not claim a primary residence in PEI, then his Senate seat could be in jeopardy. Wright assured him that was not the case⁴¹;

³⁷ CTV news article dated May 15, 2013 at 1205 hours.

³⁸ Transcript of statement obtained from Globe and mail news article dated May 19, 2013 at 1046 hours.

³⁹ Report of S/Sgt. Arbour dated June 17, 2013 at 1524 hours.

⁴⁰ Police report of S/Sgt. Arbour dated June 19, 2013 at 0930 hours, and weekly summary report prepared by Supt. Carrese dated June 20, 2013.

⁴¹ The constitution requires a Senator to own property of a specified value in the province they represent, and to be a resident of that province, but it does not specify that their "principal" residence must be in that province.

- e. The Conservative Party was initially going to repay the money for Duffy, from a Conservative fund, when it was believed that the amount he owed was approximately \$32,000. The fund is controlled by Senator Gerstein;
- f. When it was realized that the cost was actually \$90,000, it was too much money to ask the Conservative Party to cover;
- g. Wright then offered to cover the cost for Duffy, believing it was the proper ethical decision that tax payers not be out that amount of money;
- h. There was no written contract between Wright and Duffy;
- i. Wright asked for two conditions from Duffy:
 - i. Pay back the money right away
 - ii. Stop talking to the media about it
- j. Wright sent the money to Duffy's lawyer, surname Payne
- k. The payment to Duffy was made with a bank draft on March 26, 2013;
- l. Wright received no direction from anyone to make the offer;
- m. Wright and Duffy knew each other, but were not friends;
- n. Wright did not make similar offers to other Senators being investigated;
- o. Wright does not expect any of the money back;
- p. Wright obtained a copy of the letter from the Senate to Duffy, stating how much he would need to reimburse;
- q. Some people within the PMO were aware of the arrangement, but Prime Minister Harper was not
- r. McCann and Mantas were not aware of any involvement this deal may have had regarding the altered Senate report draft.

37. On June 21, 2013 my office received a letter from Peter Mantas, which I have read, advising that Mr. Wright recalls that he told the following people that he would personally provide funds to repay Duffy's claimed secondary residence expenses:

- a. David van Hemmen (PMO)
- b. Benjamin Perrin (PMO)
- c. Chris Woodcock (PMO)
- d. Senator Irving Gerstein

Attached to the letter was an electronic copy of a CIBC bank draft made out to Duffy's Lawyer (Nelligan O'Brien Payne LLP) for \$90,172.24, date stamped March 25, 2013.

[Investigators have not yet interviewed Nigel Wright]

The Senate Reports

38. As previously mentioned, The Senate Standing Committee released its own report (Senate Report 22) on May 9, 2013 which summarizes the Deloitte Report, and the final findings of the Senate committee. The Senate report acknowledged that Duffy paid back

more than \$90,000 in expenses, and noted that Deloitte could not assess the status of Duffy's primary residence based on the Senate regulations and guidelines.⁴²

39. On May 17, 2013 CTV News reported that the Senate Report 22 was actually altered from its original draft text. Citing unnamed sources, the media reported that the draft report had initially been critical of Duffy, but that the critical parts were removed to create the final version. This was in keeping with agreement between Duffy and Wright, that the Senate would go easy on him if he publically announced that he was paying back \$90,000, and he would be given the \$90,000 to make the repayment. CTV News obtained a copy of the draft report, and published the differences between it and the final version. CTV claims that the following paragraphs appeared in the original Senate report, but are not included in the final report which was made public⁴³:

- a. *"Following repayment, Deloitte reiterated its request for documentation and for a meeting to counsel for Senator Duffy on March 21, 2013. A letter was received from Ms. Payne on March 26, 2013 in response, indicating that Senator Duffy had repaid an amount regarding housing an amount regarding housing and living allowance and that, 'In the circumstances, the review that Deloitte has been asked to undertake is now unnecessary. The considerable time required for Senator Duffy to compile the extensive information and documentation required of him by Deloitte as well as his participation in the review of that material, to say nothing of the public expense involved in the same, is no longer needed.' "*
- b. *"...However, the purpose and intent of the original Living Expense in the NCR Guidelines and of the Senators Travel Policy adopted in June 2012 are very clear: senators who do not have their home within 100 kilometres of Parliament Hill and who would not be in Ottawa if it were not for the fact that they are Senators who must attend Senate business, may be reimbursed additional expenses incurred for accommodations while in Ottawa to attend Senate business. The Declaration of Primary and Secondary Residence form that accompanies the police instrument, in use since 1998, requires Senators to affirm whether their **primary** residence is "within 100 kilometres from Parliament Hill" or is "more than 100 kilometres from Parliament Hill." To claim living expenses in the NCR, any residence owned or rented by a Senator must be a **secondary** residence, for use by the Senator while in the NCR for Senate business. Your Subcommittee considers this language to be unambiguous and, plainly, if a Senator resides primarily in the NCR, he or she should not be claiming living expenses for the NCR."*
- c. *"...Additionally, Senator Duffy's travel patterns were consistently Ottawa-PEI-Ottawa, demonstrating that Ottawa was his primary or default location. Further, your Subcommittee was aware that Senator Duffy registered his Ottawa address for several official purposes during the period of review. It is therefore the*

⁴² I learned this by reading the Senate report dated May 9, 2013.

⁴³ I learned this from the CTV News report dated May 17, 2013

conclusion of this Subcommittee that, based on the evidence presented in the examination report, while recognizing that Senator Duffy owns a residence in PEI and spends considerable time there, in particular during the summer months, his continued presence at his Ottawa residence over the years does not support such a declaration and is contrary to the plain meaning of the word "primary" and to the purpose and intent of the provision of living allowance in the NCR."

40. On May 29th, 2013, after considerable backlash in the media, and revelations about NCR per diem expense claims, and the undisclosed \$90,000 gift from Wright to Duffy, The Standing Committee held an open meeting to discuss Senator Duffy's expenses. As a result of that meeting, they adopted several amendments to The Senate Report 22, and published these amendments in a new report (Senate Report 26). The new report contained the following:

- a. *"Your Committee acknowledges Deloitte's finding that criteria for determining primary residence are lacking and this is being addressed by your Committee. However, to claim living expenses in the National Capital Region, any residence owned or rented by a senator must be a secondary residence for use by the senator while in the NCR for Senate business. Your committee considers this language to be unambiguous; and plainly if a senator resides primarily in the NCR, he or she should not be claiming living expenses for the NCR."*
- b. *"It is therefore the conclusion of the Committee that based on the evidence presented in the examination report, while recognizing that Senator Duffy owns a residence in P.E.I. and spends considerable time there, his continued presence at his Ottawa residence over the years does not support such a declaration and is, therefore, contrary to the plain meaning of the word "primary" and to the purpose and intent of the provision of the Living Allowance in the NCR."*
- c. *"That the Senate request that the proper authorities examine the matters dealt with in this report and related information, including Senator Duffy's repayment of \$90,172.24 to the Receiver General of Canada, and that the Standing Committee on Internal Economy, Budgets and Administration be authorized to refer such documents, as it considers appropriate, to the proper authorities for the purposes of the investigation."*

I've attached copies of the 22nd and 26th Senate reports as Exhibit II. I've also attached copies of the final Senate reports relating to Senators Brazeau and Harb (23rd and 24th Report) to demonstrate that they are in fact more critical than that of 22nd report relating to Duffy.

41. On June 19, 2013 I participated in an interview of Senator George Furey. He explained that the Standing committee has a sub-committee which was responsible for reviewing

the Duffy matter. The sub-committee consists of three Senators, Tkachuk (chair, Conservative), Stewart-Olsen (Conservative) and Furey (Liberal). He further explained that:

- a. Upon receiving the Deloitte report, the sub-committee was to prepare a report which would be presented to the larger committee;
- b. The draft of that report is usually completed by their clerk, Gary O'Brien.
- c. The draft report was first received on May 7, 2013, and contained 3 main criticisms of Duffy;
- d. Tkachuk, Stewart-Olsen, and Furey made minor changes to the report on that date;
- e. On May 8, the sub-committee met again at which time Tkachuk proposed that they remove 2 of the 3 criticisms. Furey objected, but was the minority on the committee and Stewart-Olsen agreed with Tkachuk. The report was amended.
- f. On May 9, the report was tabled in the larger Standing Committee, at which time the Conservative majority removed the 3rd and final criticism of Duffy from the report.
- g. Furey did not agree with the amending of the report, and made a point of that in the Senate, questioning the timing and reasons for the changes.

42. On June 21, 2013, I participated in an interview with Senator Stewart-Olsen. She provided much of the same background as Senator Furey did relating to the audit. She also said the following:

- a. The initial draft Senate Report 22 was prepared by Senate Administration, possibly Gary O'Brien, Senate Clerk, and then underwent changes in the sub-committee consisting of herself and Senators Tkachuk and Furey;
- b. It is normal for the draft to have changes made, and that there were many draft versions. She then conceded that the sub-committee only met to make changes only twice, on May 7 and 8, 2013;
- c. She said changes were made on both dates, but did not remember what the changes were;
- d. She also said changes were made on May 9 when the report was tabled in the full committee, but did not remember what the changes were;
- e. No one directed or influenced her to make changes to the report;
- f. She and Senator Tkachuk discussed the report outside of the sub-committee meetings
- g. Their job was to get the money repaid from Senators if necessary, and the paragraphs removed from the Duffy report were not needed because he had paid back \$90,000;
- h. She did not know that Nigel Wright paid the money until hearing it on the news;

- i. Drafts of the Senate Report do exist in possession of the Senate (confirmed by Michele Patrice, Senate law clerk who attended the interview);
[Senator Tkachuk was scheduled to be interviewed, but has since postponed due to health reasons. It is my intention to interview him when he is physically able]
43. Much of the details pertaining to the deal between Duffy and Wright, and the repayment of \$90,000 has come from media stories which are citing un-named sources. I cannot assess the validity of an un-named media source. I did contact CTV News journalist, Robert Fife on May 28th, 2013 in an effort to confirm the accuracy of his reporting that there was some form of written agreement. Mr. Fife advised that it was his understanding that there is a written letter of understanding, but that he has not been able to verify that, does not know where it is, and has not seen it. I know based on statements made by those involved that:
- a. Duffy made a public statement that he paid back \$90,000;
 - b. Duffy was reimbursed the \$90,000 by Wright, and that information was not made public until uncovered and revealed by the media;
 - c. The final Senate Report 22 relating to Duffy's expenses was less critical than the original draft report, which is consistent with the purported deal between Duffy and Wright;
 - d. David Tkachuk, one of the two Conservative Senators on the three person sub-committee which prepared the Senate report acknowledged in an interview that Nigel Wright had been in communication with him during the audit process of Duffy. Tkachuk has also been in contact with Duffy during the audit process, and in fact informed him of some of the audit findings such as identification of the NCR per diem claims for days spent in Florida, prior to Deloitte filing a written report. Tkachuk has publically denied any influence was put on him about what would be written in the Senate Report 22.⁴⁴
44. Based on all of the information set out above, I believe that there was an agreement between Duffy and Wright involving repayment of the \$90,000 and a Senate Report that would not be critical of him, constituting an offence of Frauds on the Government. Wright's own lawyers partially confirm this by saying that Wright had two conditions of Duffy in return for the money, to pay it immediately and stop talking to the media about it.

Summary of Investigation

45. There are three different allegations being investigated relating to Senator Duffy. The first is a Breach of Trust as it relates to collecting a housing allowance for maintaining a secondary residence in the NCR⁴⁵. The Deloitte Report was a review of expenses and

⁴⁴ MacLeans news article dated May 23, 2013 at 1247 hours.

⁴⁵ The Senators' Living Expenses in the NCR Guidelines state that a senator who owns a secondary residence in the NCR may be reimbursed for accommodation expenses at the rate set out in the *Senate administrative Rules* or in the *Senator's Travel Guidelines* for each day such residence is available for the senator's occupancy, and providing that

claims by Senator Duffy, in an effort to identify the location of his primary residence. Essentially it examined documents such as expense claims, phone bills, and credit card statements in an effort to identify where Duffy spent the majority of his time (PEI or Ottawa). While they concluded that the Senate regulations and Guidelines do not include criteria for determining a “primary residence” they did determine that Duffy spent the majority of his time at his Ottawa residence, and used his PEI residence mostly in the summer. As a result of the Deloitte Report, the Senate Standing Committee later released Senate Report 26, which acknowledged that criteria for determining primary residence was lacking, but that language relating to when a Senator can make a claim for a secondary residence in Ottawa is unambiguous. They concluded that Duffy’s continuous presence at his Ottawa residence does not support the claim that it is a secondary residence. I too believe that Duffy’s primary residence is in Ottawa, not PEI, and the following points further support my belief:

- a. Duffy has lived in Ottawa since 1971;
- b. He had an Ontario driver’s license right up to the day that he was appointed to the Senate, at which time he applied for and received a PEI driver’s license;
- c. By his own admission, Duffy receives ongoing treatment for a heart condition in Ontario⁴⁶. To receive Ontario Health Insurance Program (OHIP) coverage, one of the requirements is that a person’s “primary place of residence” must be in Ontario.⁴⁷ As noted previously, Duffy does not have a PEI health card, and attempted to have the application for one expedited upon learning that the Senate was requiring all Senators to produce a health card from their home province to prove residency.
- d. Duffy listed his Ottawa address as his “permanent residence” on his 2007 Canadian passport application. On his 2012 Passport Simplified Renewal, he listed his Ottawa address as his “current home address”.⁴⁸
- e. Mike Duffy is listed as the Director of Mike Duffy Media Services Inc., an active Canadian Corporation since 1988, with corporation #2386852. The registered office address for that corporation is Duffy’s Ottawa address⁴⁹.

46. The next allegation is a continuation of the Breach of Trust, relating fraudulent per diem expense claims. A Senator who is on travel status in Ottawa for Senate business will be reimbursed at the daily per diem rate.⁵⁰ As set out previously, Senator Duffy has exhibited a pattern of claiming NCR per diems for days that he is not in the NCR. A review by the Senate identified 49 such claims filed by Duffy in an 18 month period, 25 of which were paid to Duffy. The circumstances of these claims vary. Some occur while Duffy is in Florida, others while he is in PEI, and yet others while he is campaigning in

during such time it is not rented to another person or claimed as an expense by another senator. The senator is required to submit a proof of ownership of that secondary residence with the *Declaration of Primary and Secondary Residences* form on a yearly basis (at the beginning of each fiscal year).

⁴⁶ CTV News article dated February 22, 2013.

⁴⁷ OHIP website www.health.gov.on.ca on march 8, 2013.

⁴⁸ I learned this by reading Duffy’s passport applications dated March 24, 2007 and February 6, 2012.

⁴⁹ I learned this from a Corporations Canada website query dated June 5, 2013.

⁵⁰ Senators Living Expenses in the NCR Guideline

the 2011 Federal election. Based on this pattern, I believe it is likely that this pattern goes beyond the 18 month period that has been examined by Deloitte and the Senate Finance.

47. The final allegation relates to Frauds on the Government by Senator Duffy relating to accepting money for the repayment of \$90,000 to the Receiver General of Canada. This figure represents all of the living expenses paid to Duffy since being appointed to the Senate. These living expenses consist of Duffy's secondary housing allowance for owning a house in the NCR, as well as NCR per diem claims relating to those days when collected a per diem for being in Ottawa on Senate business. Duffy publically proclaimed that he paid back the money in March 2013, only to have it revealed later that he was reimbursed that money by Nigel Wright, the Prime Minister's then Chief of Staff. The public allegations are that there was a deal in place whereby Duffy would publically admit he had made the claims in error and be seen to be doing the right thing by paying the money back, and in return he would be reimbursed that money by Nigel Wright, and the Senate Report would go "easy" on him.

PRODUCTION ORDERS SOUGHT

48. I am seeking a Production Order for copies of the following documents or data, from the Senate of Canada:

- a. All declarations of primary and secondary residence submitted by Senator Mike Duffy between December 22, 2008 and June 1, 2013.

[These documents will provide evidence that Duffy did in fact file declarations of the locations of both his primary and secondary residence over the years]

- b. All Travel Expense Claim forms (for 64 points travel system and living expenses in the NCR) and supporting documentation and receipts submitted by Senator Mike Duffy between December 22, 2008 and June 1, 2013.

[The expense claims, some of which contains fraudulent claims of expenses, will provide evidence of the breach of trust, and enable investigators to complete a full forensic audit which will be further evidence of the offence]

- c. A copy of the Report of the Clerk of the Senate dated May 28, 2013, pertaining to Senator Mike Duffy's expenses.

[This report is evidence as it is a summary of the Senate Finance department's investigation to date. It identifies specific incidents where improper expense claims were filed, and I rely on this report and those incidents as evidence in the Information]

- d. All billing statements of all American Express corporate travel cards issued to Senator Mike Duffy by the Senate of Canada, dated between December 22, 2008 and June 1, 2013.

[These billing statements will allow investigators to examine Duffy's expenses relating to Senate travel, and also provide evidence of a location of Duffy on specific dates as purchases and charges are made. The location of Duffy is relevant as some of the offence involves Duffy claiming NCR per diem, while not in the NCR. The credit card statement will provide evidence of Duffy not being in Ottawa on specific dates, and enable investigators to conduct a full audit of expenses]

- e. All detailed billing statements pertaining to all mobile telephones issued by the Senate of Canada to Senator Mike Duffy, dated between December 22, 2008 and June 1, 2013.

[Like the credit card statements, the mobile phone detailed billing records will enable investigators to identify the location of Duffy on specific dates. Again, this is relevant evidence when demonstrating that Duffy was not in Ottawa on dates that he claimed NCR per diem.]

- f. Senate attendance records of Senator Mike Duffy for all days that the Senate was in session, between December 22, 2008 and June 1, 2013.

[These documents are relevant as they will provide evidence to show some of the dates that Duffy was in fact in Ottawa]

- g. Copies of the four documents submitted to the Senate by Senator Mike Duffy, as supporting indicators of where his primary residence is located, consisting of: a driver's licence, provincial health card, information from personal income tax return providing provincial tax information, and a signed statement of where he voted.

[These four documents are relevant to the Breach of Trust offence as they are the 4 items that all Senators were to produce to the Senate in late 2012 in order to demonstrate that their primary residence was in the province they represent. Three of the four items are evidence to the contrary for Duffy]

- h. A copy of the electronic calendar maintained by Senate Finance documenting Senator Mike Duffy's travel and expenses, and corresponding legend of codes used on the calendar.

[Senate finance uses this calendar to maintain a record of when a Senator is traveling or hosting an event. It assisted in identifying when claims overlap when submitted separately. It will provide evidence in this matter as it was used by

Senate finance to decline some of Duffy's claims, and will assist investigators in the same regard]

- i. A system generated report to show records of all expense claim payment from the Senate to Senator Mike Duffy between December 22, 2008 and June 1, 2013.
- j. A system generated report to show records of all expense repayments by Senator Duffy to the Senate between December 22, 2008 and June 1, 2013.

[sub-paragraphs i. and j. will provide a record of all expense claims that were paid out by the Senate to Duffy, as well as all expenses paid out by Duffy to the Senate. This will assist in the forensic audit process to show exact amounts, and a record of such transactions]

- k. A copy of a check issued to the Receiver General of Canada, from Senator Mike Duffy, for a value of \$90,172.24.
 - l. Copies of all drafts of the Twenty-Second Report of the Senate of Canada 's Standing Committee on Internal Economy, Budgets and Administration.
49. The Senate has already provided the RCMP with declarations of primary and secondary residence, travel expense claims and supporting documentation, and the Report of the Clerk of the Senate (sub-paragraphs a, b and c above). I am seeking a Production Order for this material again, in the form of certified true copies, as I believe this material is evidence of the named offence of Breach of Trust, and will assist investigators in conducting a complete forensic audit of Senator Duffy's travel and expenses.
50. While the Senate has provided the RCMP with all of Duffy's expense claims since he was appointed to the Senate in 2008, the additional documentation sought is required evidence so that a comprehensive audit can be conducted in order to confirm the findings of Deloitte and the Senate Finance to date, as well as extend the review for the entire time that Duffy has been in the Senate. The documents in possession of the Senate that will provide evidence and assist in that regard are listed in the previous paragraph, letters d, e f, g, h, I and j.
51. As set out previously, besides the allegations of Breach of Trust, I am also investigating the circumstances around Senator Duffy's repayment of \$90,000 to the Receiver General of Canada. This figure represents all of the living expenses paid to Duffy since being appointed to the Senate. These living expenses consist of Duffy's annual secondary housing allowance for owning a house in the NCR, as well as NCR per diem claims relating to those days when collected a per diem for being in Ottawa on Senate business. As mentioned previously, Duffy publically proclaimed that he paid back the money in March 2013, only to have it revealed later that he was reimbursed that money by Nigel Wright, the Prime Minister's then Chief of Staff. The public allegations are that there was a deal between Duffy and Wright whereby Duffy would publically admit he filed the expense claims in error, and be seen to be doing the right thing by paying the money

back. In return, Duffy would be reimbursed that money by Nigel Wright, and the Senate Report would go “easy” on him. I spoke to Nicole Proulx on June 5, 2013, and she advised me that she did process the cheque from Duffy for \$90,172 .24. She said the cheque was made out to the Receiver General, that the address portion relating to Duffy was his PEI residence, and that her office is in possession of a copy of that cheque. I am seeking a Production Order for a copy of that cheque as it is evidence of the named offence of Frauds on the Government, and will assist in advancing this investigation by providing additional information such as the bank branch and account number from which the cheque was issued, enabling further production orders should they be required.

52. It has been reported that the final version of the Senate Report 22 (officially named the *Twenty-Second Report of The Standing Committee on Internal Economy, Budgets and Administration*) differed significantly from the draft version of the report, and that the final version was less critical of Duffy. I previously set out the differences between the two reports, to show that the final report was less critical than the draft. This fact lends merit to my belief that there was a deal between Nigel Wright and Mike Duffy. Duffy appeared to take responsibility for the expense claims, and appeared to pay back \$90,000 out of his own bank account, but in reality he was reimbursed that money by Nigel Wright, and the final version of the Senate Report was in my opinion, not critical of Duffy. In contrast, I have read the final Senate Reports relating to both Senators Brazeau and Harb, and they are more critical than that of Duffy. I am therefore seeking a Production Order for copies of all drafts of the Senate Report 22 because I believe they provide evidence of the named offence of Frauds on the Government.
53. On May 31, 2013, I participated in an interview with Nicole Proulx, Director of Finance and Procurement for the Senate. I have also had conversations with her on the phone since then. She advised me that she is in care or control of all of the documents and data that I am seeking, and that they can be produced by serving her a Production Order through Michel Patrice, the Senate law clerk. She further advised that they retain on file all documents relating to finance for 8 years, prior to destruction. Both Mr. Patrice and Ms. Proulx are aware that a Production Order will be served, and Michele Patrice will ensure that the process conforms to parliamentary privilege rules, and can assist Ms. Proulx in obtaining documents not in her direct possession.
54. Neither Nicole Proulx nor Michel Patrice is under investigation for any of the offences listed in this Information.

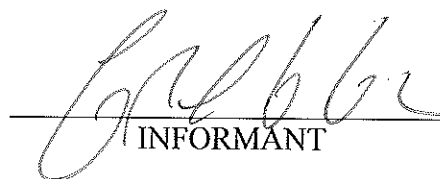
SEALING ORDER

55. I am proposing that an order pursuant to s. 487.3 of the *Criminal Code* be issued prohibiting access to and the disclosure of any documents or information relating to this application, including the Information sworn and any copy of the said production order and sealing order, and any subsequent Report to Justice filed and Detention Order , and that they be sealed from public view in the same packet on the grounds that:

- a. This is an ongoing investigation involving high level political officials. As such it has garnered heightened media attention. While investigators have interviewed some of the people involved, there are still others who have not been interviewed. It is important that those who have not yet been interviewed, not be aware of the evidence police have, or do not have, prior to their interviews. To know the extent of the evidence collected to date, and what other witnesses said or didn't say to police, could cause others to withhold certain facts.
- b. Some of those not yet interviewed include Senator Tkachuk who is currently unable to meet because of medical reasons, and Benjamin Perrin, former legal adviser to the PMO, who cannot meet investigators until after July 5th. Additionally, both Nigel Wright and Mike Duffy have not yet been interviewed.
- c. I believe that if those involved become aware of the investigation to date then it would compromise the nature and extent of the ongoing investigation. As a result, the above noted considerations outweigh the importance of the access to the information.

WHEREFORE I ask that a Production Order be granted for the said documents and data.

AFFIRMED BEFORE ME AT the city of
Ottawa, in the Province of Ontario this
24th day of June 2013.


INFORMANT



A COMMISSIONER FOR THE TAKING OF
OATHS IN THE PROVINCE OF ONTARIO

Chantal Dominique Marie Lurette, a Commissioner, etc.,
Province of Ontario, for the Government of Canada.,
Department of Public Safety and Emergency Preparedness.
Expires January 10, 2014.
Chantal Dominique Marie Lurette, commissaire, etc.,
Province de l'Ontario, au service du gouvernement du Canada,
Ministère de la Sécurité publique et de la Protection civile.
Date d'expiration: le 10 janvier 2014.